

§ 238.87

(iii) The date that the Board denies a timely request for hearing under § 238.90(b) following the issuance of a Board denial of the application under § 238.89(b);

(iv) The date that the Board issues a decision under § 238.90(d); or

(v) The date an applicant withdraws the application.

§ 238.87 Filing procedures.

(a) *Who may file.* (1) A savings and loan holding company or a person who was convicted of a criminal offense described in § 238.84 or who has agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such a criminal offense may file an application with the Board seeking an exemption from the prohibitions in this subpart.

(2) A savings and loan holding company or a person may seek an exemption only for a designated position (or positions) with respect to a named savings and loan holding company.

(3) A savings and loan holding company or a person may not file an application less than one year after the latter of the date of a denial of the same exemption under § 238.89(b), § 238.90(a) or § 238.90(d).

(b) *Prohibition pending Board action.* Unless a savings and loan holding company or a person is exempt under § 238.86(b), the prohibitions in § 238.83 continue to apply pending Board action on the application.

§ 238.88 Factors for review.

(a) *Board review.* (1) In determining whether to approve an exemption application filed under § 238.87, the Board will consider the extent to which the position that is the subject of the application enables a person to:

(i) Participate in the major policy-making functions of the savings and loan holding company; or

(ii) Threaten the safety and soundness of any insured depository institution that is controlled by the savings and loan holding company, the interests of its depositors, or the public confidence in the insured depository institution.

(2) The Board will also consider whether the applicant has demonstrated the person's fitness to hold

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the described position. Some positions may be approved without an extensive review of a person's fitness because the position does not enable a person to take the actions described in paragraph (a)(1) of this section.

(b) *Factors.* In making the determinations under paragraph (a) of this section, the Board will consider the following factors:

(1) The position;

(2) The amount of influence and control a person holding the position will be able to exercise over the affairs and operations of the savings and loan holding company and the insured depository institution;

(3) The ability of the management of the savings and loan holding company to supervise and control the activities of a person holding the position;

(4) The level of ownership that the person will have at the savings and loan holding company;

(5) The specific nature and circumstances of the criminal offense. The question whether a person who was convicted of a crime or who agreed to enter into a pretrial diversion or similar program for a crime was guilty of that crime is not relevant;

(6) Evidence of rehabilitation; and

(7) Any other relevant factor.

§ 238.89 Board action.

(a) *Approval.* The Board will notify an applicant if an application under this subpart is approved. An approval by the Board may include such conditions as the Board determines to be appropriate.

(b) *Denial.* If Board denies an application, the Board will notify an applicant promptly.

§ 238.90 Hearings.

(a) *Hearing requests.* Within 20 days of the date of issuance of a denial of an application filed under this subpart, a savings and loan holding company or a person whose application the Board has denied may file a written request demonstrating good cause for a hearing on the denial.

(b) *Board review of hearing request.* The Board will review the hearing request to determine if the savings and loan holding company or person has demonstrated good cause for a hearing